UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Fleetilla, LLC, a Michigan Limited Liability Company, Plaintiff, v. Virtual Fleet Management, LLC, a Texas Limited Liability Company, and Patent Licensing Alliance, LLC a Utah Limited Liability Company, Defendants.	)))))))))))))))))	Case No.: 2:16-cv-11060- BAF-RSW United States District Judge Bernard A. Friedman Magistrate Judge R. Steven Whalen

FIRST AMENDED COMPLAINT

Plaintiff Fleetilla, LLC ("Fleetilla") seeks a declaration that it does not infringe, directly or indirectly, United States Patent No. 6,958,701, and seeks a declaration of invalidity as to United States Patent No. 6,958,701. Fleetilla also seeks relief under the Michigan Consumer Protection Act.

For its First Amended Complaint against the Defendant, Fleetilla states:

JURISDICTIONAL STATEMENT

1. This is an action arising under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.* and the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

2. Jurisdiction and venue are appropriate in this Court pursuant to 28 U.S.C. §§ 1331, 1338(a), 1367(a), and 1391(b).

THE PARTIES

3. Plaintiff is a Michigan limited liability company with its principal place of business at 5200 S. State Road, Ann Arbor, MI 48108.

4. Beginning as early as 2000, through its predecessor Fleetilla, Inc., and continuing to the present day, Plaintiff developed, manufactures and markets fleet management systems and asset tracking systems. These products are used to manage fleets of vehicles as well as assets such as trailers, frac tanks, roll-off boxes, and construction equipment. Plaintiff sells these systems to customers in the State of Michigan, as well as to customers who use those products in the State of Michigan.

5. Plaintiff's products include a suite of hardware devices and software products. Examples of Plaintiff's hardware devices include model nos. FL1850v3, FL1260, and FL1265. Plaintiff's software products include

FleetOrb, which is a powerful, cloud-based, fleet-management application, fleetMOBI, which is a fleet-management application for mobile devices, and fleetML, which is an Application Program Interface ("API") that allows customers to integrate vehicle location data into existing software systems.

6. On information and belief, Defendant Virtual Fleet Management, LLC ("Defendant VFM") is a limited liability company organized under the laws of the State of Texas, with its principal place of business at 525 Mist Flower Dr., Little Elm, TX 75068.

7. On information and belief, Defendant VFM is the owner by assignment of U.S. Patent No. 6,958,701 ("the '701 patent"), issued on October 25, 2005, to John D. Storkamp, Mark A. Storkamp, and Ronald H. Menzhuber, entitled "Transportation Monitoring System for Detecting the Approach of a Specific Vehicle." A copy of the '701 patent is attached hereto as Exhibit A.

8. On information and belief, Defendant VFM was organized On January 21, 2016 for the sole purpose of asserting the '701 patent.

9. On information and belief, Defendant Patent Licensing Alliance, LLC ("Defendant PLA") is a limited liability company organized under the laws of the State of Utah, with its principal place of business at 5251 South Green St., Suite 350, Murray, UT 84123.

10. On Information and belief, Defendant PLA is an agent of Defendant VFM.

DEFENDANTS' ACTIONS

11. Fleetilla received the correspondence dated March 15, 2016 and attached hereto as Exhibit B ("the PLA letter") from Defendant PLA.

12. The PLA letter indicates that the correspondence is sent on behalf of Defendant VFM.

13. The PLA letter alleges that Fleetilla "utilizes the technology" of the '701 patent, and states that Fleetilla "requires a license if you intend to continue to sell these products."

14. The PLA letter indicates that Defendant VFM and Defendant PLA are acting jointly and in concert, stating: "We are interested in reaching a direct, negotiated (and without litigation) licensing arrangement."

15. The PLA letter includes a "Pre-filing Investigation Claim Chart" explaining Defendants' allegations of infringement relative to claims 10 and 14 of the '701 patent.

16. Fleetilla received the correspondence dated March 16, 2016 and attached hereto as Exhibit C ("the PADRM letter"), from the law firm of Pia Anderson Dorius Reynard & Moss, stating that it represents Defendant VFM.

17. The PADRM letter implies that Defendant VFM will sue Fleetilla for patent infringement if Fleetilla refuses to license the ‘701 patent.

18. On March 22, 2016, by telephone, a representative of Defendant PLA, offered to license to the ‘701 patent to Plaintiff in exchange for a payment of $35,000 per year.

19. By so communicating with the Plaintiff, Defendants has availed themselves of the privilege of doing business with residents and businesses in the State of Michigan, and Defendants have become subject to personal jurisdiction in this Court for this action.

COUNT I

DECLARATORY JUDGMENT – NON-INFRINGEMENT

20. The allegations of paragraphs 1-16 of this Complaint are incorporated by reference as though set forth in full herein.

21. Defendant VFM claims to own all right, title, and interest in the ‘701 patent.

22. In the PLA letter, Defendants accuse Fleetilla of infringing at least claims 10 and 14 of the ‘701 patent, as per the allegations in the claim chart that is included in the PLA letter.

23. Fleetilla's hardware and software products, each alone or in any combination, have not infringed and are not infringing the '701 patent, directly or indirectly, either literally or under the doctrine of equivalents.

24. The charge of alleged infringement against Fleetilla has created a substantial, immediate, and real controversy between the parties as to non-infringement of the '701 patent.

25. A valid and justiciable controversy has arisen and exists between Fleetilla and the Defendants, within the meaning of 28 U.S.C. § 2201.

26. A judicial declaration of non-infringement of the '701 patent is necessary and appropriate so that Fleetilla may ascertain its rights regarding the '701 patent.

COUNT II

DECLARATORY JUDGMENT - PATENT INVALIDITY

27. The allegations of paragraphs 1-23 of this Complaint are incorporated by reference as though set forth in full herein.

28. One or more claims of the '701 patent are invalid for failure to meet one or more requirements of patentability under 35 U.S.C. § 101, et seq., including but not limited to 35 U.S.C §§ 102, 103, and 112.

29. At least claims 1-2, 4-5, 10-4, and 16 of the '701 patent are invalid under 35 U.S.C § 102 as anticipated by United States Patent No. 6,700,506 to Winkler et al. ("Winkler").

30. At least claims 1-2, 4-5, 10-4, and 16 of the '701 patent are invalid under 35 U.S.C. § 103(a) over United States Patent No. 6,714,142 to Porter et al. ("Porter") and WIPO Publication No. 93/13503 to Dulaney et al. ("Dulaney").

31. At least claims 1-2, 4-5, 10-4, and 16 of the '701 patent are invalid under 35 U.S.C. § 103(a) over Winkler and Dulaney.

32. At least claims 5-9 and 15 are invalid under 35 U.S.C. § 103(a) over Porter, Dulaney, and United Sates Patent No. 6,636,160 to Brei ("Brei").

33. At least claims 5-9 and 15 are invalid under 35 U.S.C. § 103(a) over Winkler and Brei.

34. At least claim 17 is invalid under 35 U.S.C. § 103(a) over Porter, Dulaney, and United States Patent No. 5,311,172 to Sadamori ("Sadamori").

35. At least claim 17 is invalid under 35 U.S.C. § 103(a) over Winkler and Sadamori.

36. One or more claims of the '701 patent are invalid under 35 U.S.C. §§ 102-103 over the aforementioned references and / or additional prior art references alone or in combination.

37. One or more claims of the ‘701 patent are invalid under 35 U.S.C. § 112 because they are indefinite.

38. One or more claims of the ‘701 patent are invalid under 35 U.S.C. § 112 for failing to satisfy the written description requirement.

39. The charge of alleged infringement against Fleetilla has created a substantial, immediate, and real controversy between the parties as to the validity of the ‘701 patent.

40. A valid and justiciable controversy has arisen and exists between Fleetilla and the Defendants, within the meaning of 28 U.S.C. § 2201.

41. A judicial declaration of invalidity of the ‘701 patent is necessary and appropriate so that Fleetilla may ascertain its rights regarding the ‘701 patent.

COUNT III

VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT

42. The allegations of paragraphs 1-23 of this Complaint are incorporated by reference as though set forth in full herein.

43. Defendants are engaged in trade or commerce by offering to license the ‘701 patent to Michigan residents.

44. Section 3 of the Michigan Consumer Protection Act (MCPA), MCL 445.903(1), states that certain unfair, unconscionable, or deceptive methods,

acts, or practices in the conduct of trade or commerce that are unlawful, including:

> "(n) Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction."
>
> "(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer."
>
> "(bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is."
>
> "(cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner."

45. Defendants have violated the MCPA by representing that Fleetilla uses the technology claimed by the '701 patent because no good faith basis exist for concluding that this statement is true.

46. The PLA letter states that "Fleetilla employs the technology claimed and disclosed in United States Patent 6,958,701" and refers to a claim chart attached to the letter.

47. The analysis set forth in the claim chart is frivolous and unreasonable.

48. The analysis set forth in the claim chart is contrary to statements made to the U.S. Patent and Trademark Office ("USPTO") by the patent owner regarding the scope of the claims of the '701 Patent. Exhibit D, *Patent Owner's Preliminary Response to Petition for Inter Partes Review*, Patent Trial and Appeal Board Case No. IPR2015-00397.

49. Defendants have violated the MCPA by failing to reveal a ruling made by the USPTO that casts serious doubt upon the validity of the '701 patent, and by making representations of fact that are inconsistent with the likely invalidity of the '701 patent.

50. The USPTO issued an Institution Decision in Patent Trial and Appeal Board Case No. IPR2015-00397. Exhibit E, *Decision - Institution of Inter Partes Review*, Patent Trial and Appeal Board Case No. IPR2015-00397.

51. In the Institution Decision, the USPTO found that there is a "reasonable likelihood" that certain claims of the '701 patent are invalid, including claim 10. Exhibit E, at p. 26.

52. In the PLA letter, Defendants assert that Fleetilla uses the technology of claim 10 of '701 patent and claims that Fleetilla requires a license, but fail to reveal the likelihood that claim 10 is invalid.

53. Pursuant to Section 11 of the MCPA, MCL 445.911(1)(a), Fleetilla seeks a declaratory judgment that Defendants' practices are unlawful under section 3.

54. Pursuant to Section 11 of the MCPA, MCL 445.911(1)(b), Fleetilla seeks a declaratory judgment that Defendants' practices are unlawful under section 3.

55. Pursuant to Section 11 of the MCPA, MCL 445.911(2)(b), Fleetilla seeks actual or exemplary damages together with reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Fleetilla prays for judgment and relief as follows:

A. A declaration that Fleetilla's hardware and software products, each alone or in any combination, have not infringed and do not infringe any claim of the '701 patent.

B. A declaration that the '701 patent is invalid.

C. A finding that this is an exceptional case under 35 U.S.C. § 285.

D. An award to Fleetilla of its costs and attorneys' fees in connection with this action.

E. A declaration that Defendants' actions are unlawful pursuant to MCL 445.911(1)(a).

F. An injunction pursuant to MCL 445.911(1)(b).

G. Actual damages or exemplary damages pursuant to MCL 445.911(2).

H. Attorneys' fees pursuant to MCL 445.911(2).

I. Such additional relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Fleetilla hereby requests a jury trial of all issues.

Respectfully submitted,

s/Craig A. Redinger

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DATED: June 10, 2016

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date below , I caused the foregoing paper to be electronically filed with the Clerk of the Court using the ECF system which will send notification of such to all ECF participants, and I hereby certify that I caused the paper to be served by non-electronic means upon all non-ECF participants.

s/Craig A. Redinger
Craig A. Redinger (P68794)

DATED: June 10, 2016